

AMENDED IN ASSEMBLY APRIL 21, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 698

Introduced by Assembly Member Skinner

February 26, 2009

An act to amend Sections 851 and 853 of the Public Utilities Code, relating to utility property.

LEGISLATIVE COUNSEL'S DIGEST

AB 698, as amended, Skinner. Utility property.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. The existing Public Utilities Act prohibits, with certain exemptions, any public utility other than a common carrier by railroad, from selling, leasing, assigning, mortgaging, or otherwise disposing of or encumbering the whole or any part of specified property necessary or useful in the performance of the public utility's duties to the public, without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above \$5,000,000, or for qualified transactions valued at \$5,000,000 or less, having filed an advice letter and obtained a resolution from the commission authorizing it to do so. Existing law requires the commission to determine the types of transactions valued at \$5,000,000 or less that qualify for advice letter handling. Existing law states the intent of the Legislature that transactions with monetary values that materially impact a public utility's rate base, or transactions that would

trigger the commission's review responsibilities under the California Environmental Quality Act, should not qualify for expedited advice letter review.

~~This bill would require commission approval of an advice letter for qualified transactions valued at \$5,000,000 or less where review of the transaction is necessary in the public interest and would delete the requirement, for qualified transactions valued at \$5,000,000 or less,~~ that the commission approve the advice letter by resolution. The bill would authorize the executive director of the commission or the director of the division of the commission having regulatory jurisdiction over the utility to approve the advice letter for qualified transactions valued at \$5,000,000 or less for which an advice letter is filed that is uncontested. The bill would state the intent of the Legislature that transactions with monetary values that materially impact a public utility's rate base, or transactions that would trigger the commission's review responsibilities as lead agency under the California Environmental Quality Act, should not qualify for expedited advice letter review. The bill would authorize the filing of an advice letter for transactions by the public utility if the lead agency has completed the appropriate review under the California Environmental Quality Act for the transaction, and the commission is the responsible agency under the act and approves the advice letter by resolution voted upon by the commission.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 851 of the Public Utilities Code is
2 amended to read:
3 851. A public utility, other than a common carrier by railroad
4 subject to Part I of the Interstate Commerce Act (49 U.S.C. Sec.
5 10101 et seq.), shall not sell, lease, assign, mortgage, or otherwise
6 dispose of, or encumber the whole or any part of its railroad, street
7 railroad, line, plant, system, or other property necessary or useful
8 in the performance of its duties to the public, or any franchise or
9 permit or any right thereunder, or by any means whatsoever,
10 directly or indirectly, merge or consolidate its railroad, street
11 railroad, line, plant, system, or other property, or franchises or
12 permits or any part thereof, with any other public utility, without

1 first having either secured an order from the commission
2 authorizing it to do so for qualified transactions valued above five
3 million dollars (\$5,000,000), or for qualified transactions valued
4 at five million dollars (\$5,000,000) or less, filed an advice letter
5 ~~and, where review of the transaction is necessary in the public~~
6 ~~interest, and~~ obtained approval from the commission authorizing
7 it to do so. If the advice letter is uncontested, approval may be
8 given by the executive director or the director of the division of
9 the commission having regulatory jurisdiction over the utility. The
10 commission shall determine the types of transactions valued at
11 five million dollars (\$5,000,000) or less, that qualify for advice
12 letter handling. For a qualified transaction valued at five million
13 dollars (\$5,000,000) or less, the commission may designate a
14 procedure different than the advice letter procedure if it determines
15 that the transaction warrants a more comprehensive review. Absent
16 protest or incomplete documentation, the commission shall approve
17 or deny the advice letter within 120 days of its filing by the
18 applicant public utility. The commission shall reject any advice
19 letter that seeks to circumvent the five million dollars (\$5,000,000)
20 threshold by dividing a single asset with a value of more than five
21 million dollars (\$5,000,000), into component parts, each valued
22 at less than five million dollars (\$5,000,000). Every sale, lease,
23 assignment, mortgage, disposition, encumbrance, merger, or
24 consolidation made other than in accordance with the advice letter
25 and approval from the commission authorizing it is void. The
26 permission and approval of the commission to the exercise of a
27 franchise or permit under Article 1 (commencing with Section
28 1001) of Chapter 5, or the sale, lease, assignment, mortgage, or
29 other disposition or encumbrance of a franchise or permit under
30 this article shall not revive or validate any lapsed or invalid
31 franchise or permit, or enlarge or add to the powers or privileges
32 contained in the grant of any franchise or permit, or waive any
33 forfeiture.

34 This section does not prevent the sale, lease, encumbrance or
35 other disposition by any public utility of property that is not
36 necessary or useful in the performance of its duties to the public,
37 and any disposition of property by a public utility shall be
38 conclusively presumed to be of property that is not useful or
39 necessary in the performance of its duties to the public, as to any
40 purchaser, lessee or encumbrancer dealing with that property in

1 good faith for value, provided that this section does not apply to
2 the interchange of equipment in the regular course of transportation
3 between connecting common carriers.

4 SEC. 2. Section 853 of the Public Utilities Code is amended
5 to read:

6 853. (a) This article does not apply to any person or
7 corporation which transacts no business subject to regulation under
8 this part, except performing services or delivering commodities
9 for or to public utilities or municipal corporations or other public
10 agencies primarily for resale or use in serving the public or any
11 portion thereof, but shall apply to any public utility, and any
12 subsidiary or affiliate of, or corporation holding a controlling
13 interest in, a public utility, if the commission finds, in a proceeding
14 to which the public utility is or may become a party, that the
15 application of this article is required by the public interest.

16 (b) The commission may from time to time by order or rule,
17 and subject to those terms and conditions as may be prescribed
18 therein, exempt any public utility or class of public utility from
19 this article if it finds that the application thereof with respect to
20 the public utility or class of public utility is not necessary in the
21 public interest. The commission may establish rules or impose
22 requirements deemed necessary to protect the interest of the
23 customers or subscribers of the public utility or class of public
24 utility exempted under this subdivision. These rules or requirements
25 may include, but are not limited to, notification of a proposed sale
26 or transfer of assets or stock and provision for refunds or credits
27 to customers or subscribers.

28 (c) The provisions of Sections 851 and 854 that prohibit any
29 assignment, acquisition, or change of control without advance
30 authorization from the commission, do not apply to the transfer of
31 the ownership interest in a water utility, with 10,000 or fewer
32 service connections, from a decedent to a member of the decedent's
33 family in the manner provided in Section 240 of the Probate Code
34 or by a will, trust, or other instrument.

35 (d) It is the intent of the Legislature that transactions with
36 monetary values that materially impact a public utility's rate base
37 should not qualify for expedited advice letter treatment pursuant
38 to this article. It is the further intent of the Legislature that the
39 commission maintain all of its oversight and review responsibilities
40 subject to the California Environmental Quality Act, and that public

1 utility transactions that jurisdictionally require a review by the
2 commission, as the lead agency, under the act should not qualify
3 for expedited advice letter treatment pursuant to this article. An
4 advice letter may be filed for transactions by the public utility if
5 the lead agency has completed the appropriate review under the
6 California Environmental Quality Act for the transaction, and the
7 commission is the responsible agency under the act. The advice
8 letter shall be subject to approval by resolution voted upon by the
9 commission.

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